

## REMARKS

The present amendment is prepared in accordance with the new revised requirements of 37 C.F.R. § 1.121. A complete listing of all the claims in the application is shown above showing the status of each claim. For current amendments, inserted material is underlined and deleted material has a line therethrough.

Applicants appreciate the thoroughness with which the Examiner has examined the above-identified application. Reconsideration is requested in view of the amendments above and the remarks below.

### **Allowable Subject Matter**

Claims 9-14 are allowed.

Claims 19 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 15 has been amended to include the structure wherein the ends of the left arm and right arm of the header plate mate with the corresponding opposed triangular side walls and form a gap between the ends of each arm and the end of the upper sloping surface of the side walls wherein water entering the gap is diverted away from the opening by gravity and the inner edge of the sidewalls. Such language is in allowed claim 9 and it is respectfully submitted that claim 15 is now properly allowable. Further, claims 19 and

20, which were objected to as being dependent upon a rejected base claim, are now properly allowable since they depend from claim 15. Likewise for claims 16-18.

Claim 21 has been amended to also include the structure wherein the left arm and right arm of the header plate mate with the corresponding opposed triangular sidewalls and form a gap between the ends of each arm and the end of the upper sloping surface of the sidewalls wherein water entering the gap is diverted away from the opening by gravity and the inner edge of the sidewall. Likewise, claim 25 has been so amended.

It is respectfully submitted that claims 9-14 and amended claims 15-20, 21-24, and 25-27 are now properly allowable.

### **Claim Objections**

#### **Rejection Under 35 USC § 103**

Claim 1 is rejected under 36 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,428,925 to Snyder in view of U.S. Patent No. 4,493,118 to Braxton.

The Examiner concludes it would have been obvious to one of ordinary skill in the art at the time the invention was made to have created the polymer composite basement door of Snyder et al. with one or more through openings with inserts taught by Braxton in order to provide a means for ventilation and lighting. Although Braxton does not directly teach the openings and inserts in basement doors, he does teach the openings and inserts in a polymer composite structure. Using this teaching in the construction of Snyder et al.'s basement door would have been obvious.

Applicants respectfully submit that the Snyder et al. reference and Braxton reference are non-analogous art and Braxton should not be considered as prior art. Patent Code § 103 states that the hypothetical person is expected to be skilled only in the art to which such subject matter pertains, not to be skilled in every branch of technology, science and human knowledge. An inventor could not possibly be aware of every teaching in every art. *In re Wood*, 202 USPQ 171 (CCPA 1979). The art is held to be analogous if the hypothetical person seeking a solution to the problem would be likely to seek the solution by referring to information in the other art.

It is respectfully submitted that the Braxton reference and the Snyder reference are not analogous. The Braxton reference is directed to a collapsible toilet shelter which is classified in class 4 and the Snyder reference is directed to fiberglass bulkhead door assemblies classified in class 49. A person skilled in the art of fabricating a cellar door assembly would not it is respectfully submitted look to the prior art of a collapsible toilet shelter which is a different device for a different purpose. The claimed cellar door has opposed triangular sidewalls and a door connected to the sidewalls which when opened leads to an opening in a basement. The collapsible toilet shelter of Braxton has four sides and is upright and when the door is opened, does not lead a person entering to an open space but to the inside of the self-contained shelter.

Reconsideration of this rejection is respectfully solicited.

Claims 5 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,428,926 to Snyder in view of U.S. Patent No. 5,749,182 to Vavrinak in view of U.S. Patent No. 2,174,989 to Lyons.

The Examiner concludes it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the through openings in the base of Snyder's basement door to be elongated longitudinal slotted through openings taught by Vavrinak in order to provide leeway in the longitudinal direction for the installation of the fasteners as well as the movement of the basement door itself. Using elongated openings in flange mounts to foundations is well known in the art. The elongated slotted openings allow for expansion and contraction of the basement door assembly as well as provide easier installation with more longitudinal space to insert a fastener.

It is also obvious to one of ordinary skill in the art at the time the invention was made to have used the same technique in securing the base to the foundation as one would in securing the vertical legs to the building as taught by Lyons. Securing the basement door to the building structure with the use of through openings and fasteners is notoriously well known in the art.

It would have been obvious to have increased the length of the holes as they get closer to the end of the sidewall because it will become harder to fasten the basement door assembly to the foundation since the space required to insert a too becomes smaller

and smaller. The increased length of the slotted opening will then allow the tool to be more accessible to the opening.

Firstly, claims 15-27 have been amended and are respectfully submitted to be properly allowable. This leaves only rejected claim 5.

Vavrinik is directed to a system for protecting an exposed upper surface of a building foundation during construction and comprises multiple pre-formed panels and shapes made of relatively thin stiff synthetic resin material. These panels overlie foam insulation attached to the foundation. Applicants acknowledge that elongated openings are shown in the panels but respectfully submit that this does not disclose nor teach Applicants' invention.

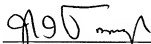
The pre-formed panels are not the base or leg of a cellar door which is secured to the foundation or house to secure the cellar door to the foundation. Pre-formed panels are being secured to the building beams merely to hold insulation against the foundation. This is different and distinct from Applicants' invention.

Lyons shows the conventional cellar door wherein circular openings are provided in the flange as to attached the door to the foundation. There is no disclosure in Lyons to use elongated openings as claimed by Applicants and actually teaches away from Applicants' invention.

It is respectfully submitted that the application has now been brought into a condition where allowance of the case is proper. Reconsideration and issuance of a Notice of Allowance are respectfully solicited. Should the Examiner not find the claims to

be allowable, Applicants' attorney respectfully requests that the Examiner call the undersigned to clarify any issue and/or to place the case in condition for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. J. Tomaszewski', written over a horizontal line.

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